

**DEPARTMENT OF STATE REVENUE
LETTER OF FINDINGS NUMBER 05-0538
RESPONSIBLE OFFICER
SALES TAX AND WITHHOLDING TAX
For Tax Period 1998-2000**

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Issue

I. Withholding Tax -Responsible Officer Liability

Authority: IC 6-3-4-8 (g), IC 6-8.1-5-1 (b).

The taxpayer protests the assessment of corporate withholding taxes against her as a responsible officer.

Statement of Facts

The taxpayer was listed on Indiana Department of Revenue (department) records as a responsible party of a corporation that did not remit the proper amount of withholding taxes and sales taxes to Indiana for the tax period 1998-2000. The department assessed the outstanding corporate withholding taxes, sales taxes, interest, and penalty against the taxpayer personally. The taxpayer protested the assessment and a hearing was held. This Letter of Findings results.

I. Withholding Tax -Responsible Officer Liability

Discussion

The proposed sales tax liability was issued under authority of IC 6-2.5-9-3 that provides as follows:

An individual who:

- (1) is an individual retail merchant or is an employee, officer, or member of a corporate or partnership retail merchant; and
- (2) has a duty to remit state gross retail or use taxes to the department;

holds those taxes in trust for the state and is personally liable for the payment of those taxes, plus any penalties and interest attributable to those taxes, to the state.

The proposed withholding taxes were assessed against the taxpayer pursuant to IC 6-3-4-8(g), which provides that “In the case of a corporate or partnership employer, every officer, employee, or member of such employer, who, as such officer, employee, or member is under a duty to deduct and remit such taxes shall be personally liable for such taxes, penalties, and interest.”

Indiana Department of Revenue assessments are prima facie evidence that the tax assessment is correct. The taxpayer bears the burden of proving that the assessment is incorrect. IC 6-8.1-5-1 (b).

The taxpayer first argued that he was merely the owner of a small amount of stock in the corporation and that he was not responsible for corporate financial decisions. Therefore, he argued that he did not have the duty to remit the corporate trust taxes to the state. The taxpayer did not submit any evidence to support this contention. Therefore, he did not sustain his burden of proving that the taxes were incorrectly imposed against him.

Secondly, the taxpayer argued that both the corporation and he personally filed bankruptcy and that absolved him of liability for the corporate trust taxes. The taxpayer errs in this conclusion. Corporate trust taxes cannot be erased by a bankruptcy.

Finally the taxpayer argues that the bankruptcy Trustee should have remitted the trust taxes. Responsible parties are jointly and severally liable for the remittance of corporate trust taxes to the state. The trust taxes should have been remitted on a regular basis to the state at the time they were collected. The taxpayer did not see that this was done on a timely basis. Therefore, he is personally responsible for the payment of the taxes. Even if someone else had the opportunity to satisfy the liabilities at a later date but failed to do so, the taxpayer is still personally responsible for the payment of the taxes since liability for these taxes is joint and several.

Finding

The taxpayer’s protest is denied.